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OFFICE OF PETITIONS

In re Application of Soltanpour et al. :
Application No. 10/733,090 : Decision on Petition
Filing Date: December 12, 2003 :
Attorney Docket No. SOLCIP3.UPA :

This is a decision on the petition filed October 24, 2005, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Facts:

A Notice of Missing Parts was mailed March 18, 2004. The Notice required the submission of:

- (1) an executed oath/declaration,
- (2) the required surcharge for the late filing of an oath/declaration, and
- (3) replacement drawings.

The Notice set a period for reply of two (2) months from the mail date of the Notice.

A reply was filed June 23, 2004. The transmittal paper indicates the reply included:

- (1) Signed declarations,
- (2) Petition for extension of time,
- (3) Check for \$120, and
- (4) Copy of Notice of Missing Parts.

The transmittal paper does not state replacement drawings are being filed. The request for an extension of time includes a certificate of mailing. The transmittal sheet does not include a certificate of mailing.

The transmittal paper listed an incorrect application number. As a result, the signed declarations and the request for an extension of time were matched with the incorrect application. The sum of \$55 for the extension of time was applied to the incorrect application. The \$55 fee has now been transferred to the instant application.

The copy of the Notice of Missing Parts was matched with the correct file. The sum of \$65 for the surcharge was applied to the correct file.

On December 8, 2004, the Office mailed a Notice withdrawing the prior Notice to File Missing Parts and mailed a new Notice to File Missing Parts. The Notice set a period for reply of two (2) months from the mail date of the Notice.

Petitioner "did not respond believing the Notice had been previously complied with."

A Notice of Abandonment was mailed August 16, 2005.

The instant petition was filed October 24, 2005. Several papers appear to be missing. The only papers matched with the file are:

- (1) 2 pages of petition,
- (2) copies of prior Notices of Missing Parts,
- (3) 3 sheets of replacement drawings, and
- (4) 2 pages of declaration.

The Office notes the 2 pages of declaration filed with the petition are NOT copies of the declaration filed on June 23, 2004. For example, the new declaration fails to acknowledge the inventors signed the declaration knowing that willful false statements and the like so made are punishable by fine or imprisonment or both.

Discussion:

Based on the facts currently before the Office, the Office concludes the application became abandoned as a matter of law on June 19, 2004. The evidence fails to establish replacement drawings were filed, or mailed in compliance with 37 CFR 1.8 or 1.10, on or before June 19, 2004. Since the withdrawal of the Notice was beyond the maximum extendable time period for reply, the withdrawal of the Notice did not retroactively stop the application from becoming abandoned.

The Office recognizes the missing pages filed with the petition might include proof drawings were timely filed. However, even with such evidence, the application would remain abandoned due to the failure to timely reply to the Notice mailed December 18, 2004. When an action is mailed and a reply not timely filed, the application goes abandoned as a matter of law.

Abandonment is not based on the correctness, in whole or in part, of an Office action. For example, if an applicant fails to respond to a restriction requirement later determined to be untenable as drafted, the application is abandoned. If an Office action is mailed rejecting claims based on anticipation over a reference that was facially not available as prior art against the application, an applicant must still respond to the Office action in order to avoid abandonment.

Petitioner failed to respond to the December 18, 2004 Notice of Missing Parts. Such response could have taken the form of a written traversal stating the missing parts had already been filed. In the alternative, petitioner could have directly contacted OIPE and taken steps to have OIPE withdraw the Notice in writing prior to the expiration of the time period for response.

For the reasons above, the holding of abandonment will not be withdrawn.
Petitioner may wish to consider filing a petition under 37 CFR 1.137.

Any request for reconsideration under 37 CFR 1.181 must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181."

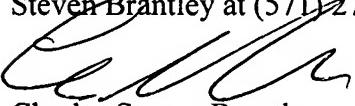
Further correspondence with respect to this matter should be addressed as follows:

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